

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

7 RICHARD K. RHINEHART, SR.,) 3:11-cv-00650-ECR-WGC
8 Plaintiff,)
9 vs.) **Order**
10 BANK OF THE WEST,)
11 Defendant.)
12)

On April 27, 2012, the Magistrate Judge filed a Report and Recommendation (#3), recommending that Plaintiff's request to proceed in forma pauperis (#1) be granted, and that the action should be dismissed with prejudice. No objections have been timely filed to the Report and Recommendation (#3).

Plaintiff filed an application to proceed in forma pauperis (#1), stating that he is on disability and does not have any form of savings. Plaintiff alleges a claim under 42 U.S.C. § 1983 against Bank of the West for wrongfully stealing money from his account. The Magistrate Judge recommends that the action should be dismissed as Bank of the West is a private entity, and § 1983 requires state action.

In addition to the Magistrate Judge's reasoning for dismissing
the action, the Court further concludes that leave to amend would be
futile in this case, as Plaintiff alleges that Bank of the West

1 wrongfully allowed someone to take money from a cashier's check on
2 July 27, 2004 when no one but Plaintiff should have been permitted
3 access to the account. This action was filed on September 8, 2011.
4 The statute of limitations for an action upon a contract,
5 obligation, or liability founded upon an instrument in writing is
6 six years in Nevada, and the statute of limitations for taking
7 personal property and for fraud is three years. Nev. Rev. Stat. §
8 11.190. Regardless of whether we characterize this action as one
9 based on a written instrument or as one for fraud or injury against
10 personal property, Plaintiff's claim is untimely.

11 **IT IS, THEREFORE, HEREBY ORDERED** that the Report &
12 Recommendation (#3), being well-taken, is **APPROVED AND ADOPTED**.
13 Plaintiff's request to proceed in forma pauperis (#1) is **GRANTED**.
14 The Clerk shall file the complaint (#1-1). The movant herein shall
15 be permitted to maintain this action to conclusion without the
16 necessity of prepayment of fees or costs or the giving of security
17 therefor. This order granting in forma pauperis shall not extend to
18 the issuance of subpoenas at government expense.

19 **IT IS FURTHER ORDERED** that the action is **DISMISSED WITH**
20 **PREJUDICE**.

21 The Clerk shall enter judgment accordingly.
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24 DATED: September 25, 2012.

25 
26 UNITED STATES DISTRICT JUDGE
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